STATEMENT BY
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CHAIRMAN OF UNITED STATES DELEGATION
TO THE THIRD UNITED NATIONS LAW OF THE SEA CONFERENCE
BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE,
SUBCOMMITTEE ON OCEANS AND INTERNATIONAL ENVIRONMENT
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Once again, it is an honor and pleasure to appear before the Senate Foreign Relations Committee to report on the progress in the Law of the Sea negotiations. The second substantive session of the Third United Nations Conference on the Law of the Sea was held in Geneva from March 17 to May 9, 1975. A third substantive session of eight weeks is planned for New York in 1976 commencing on March 29; the Conference also recommended that the United Nations General Assembly provide for an additional substantive session in the summer of 1976 if the third session of the Conference so decides and that the Conference be given priority by the General Assembly. Much to my regret our propcsal that the Assembly expressly provide for completion of the treaty in 1976 was not approved.

I would summarize the results of the Geneva session as follows: The session concentrated on what is was supposed to -- the translation of the general outlines of agreement reached at the first session in Caracas into specific treaty articles and achieved a very considerable degree of progress; however, not as much progress as our

Delegation had hoped or as the pressures for prompt agreement on a new law of the sea demand.

The decision of the Caracas session not to prolong general debate was respected -- so much so that formal Plenary and Commission sessions were largely devoted to organizational and procedural matters. The substantive work of the session was carried on in informal Committee meetings (without records) and in working groups -- both official and unofficial -- with as many as fifteen different groups meeting in the course of a single day; and in private bilateral and multilateral consultations.

The official groups were handicapped by the insistence -- a reflection of the acute sensitivity of many countries with respect to the sovereign equality of all states -- that all such groups be open-ended. As a result they were completely ineffectual in dealing with controversial issues of general interests; such meetings were attended by a very large number of Delegations who, by and large, restated their national positions rather than negotiating widely acceptable treaty language. The official working groups were much more effective in dealing with a number of articles which were relatively non-controversial or of interest to only a limited number of countries -- such as the articles dealing with the base-lines from which the territorial area is to be measured, innocent passage in the territorial sea, high seas law and,

in the pollution area, articles on monitoring environmental assessments and land-based sources of pollution.

The most effective negotiations and drafting of compromise treaty articles in major controversial areas took place in unofficial groups of limited but representative composition which were afforded interpretation and other logistical support by the Conference secretariat.

The Evensen group of some 30 to 40 participants, principally head of Delegation, was organized by Minister Evensen of Norway, initially on the basis of cooperation by a group of international lawyers acting in their personal capacity, but functioning at Geneva more as representatives of their respective countries. The Evensen group concentrated on the economic zone and vessel source pollution. The dispute settlement group which met under the co-chairmanship of Mr. Adede of Kenya and Ambassadors Galindo Pohl of El Salvador and Harry of Australia, with Professor Louis Sohn of Harvard serving as Rapporteur, was open to all conference participants and was attended at one time or another by representatives from more than 60 countries. A different sort of group was organized by representatives of the United Kingdom and Fiji to work out a set of articles on unimpeded transit through straits as a middle ground between the free transit articles supported by many maritime countries and the innocent passage concept supported by a number of straits states.

In brief, the principal substantive accomplishments of the session were the large number of relatively non-controversial treaty articles agreed to in the official working groups and the more controversial articles negotiated in the smaller unofficial groups which, while not as yet accepted by the Conference as a whole, do represent negotiated articles in large measure accommodating the main trends at the Conference.

The principal procedural achievement of the Geneva session was the preparation of informal single negotiating texts covering virtually all the issues before the Conference. These texts were prepared by the Chairmen of the three Main Committees on their responsibility pursuant to the consensus decision of the Plenary, on the proposal of the Conference President, that they should prepare negotiating (not negotiated) texts as a procedural device to provide a basis for negotiations. Copies of the texts have been given to the Committee for your study, and possible inclusion in the record. The single Committee texts do provide a means for focussing the Conference work in a way that should facilitate future negotiations with revisions and amendments reflecting the agreements and accommodations I hope will be reached at the next session.

There was clear evidence at the Geneva session of a widespread desire to conclude a comprehensive treaty on the Law of the Sea. Unfortunately, the nature of the negotiations

was not geared to immediately visible results and the public impressions may have been that little progress was made. In fact, there were substantial achievements in some areas, although overall I was disappointed that the work schedule outlined by the General Assembly for conclusion of the treaty in 1975 will not be met. The informal single texts and the provision for a second meeting in 1976 if the Conference so decides, provide a procedural basis for concluding a treaty next year. It remains to be seen whether or not the will exists to reach pragmatic solutions where wide differences of view sitll exist. In this connection, I should also point out that a number of countries, particularly those with little to gain and in some cases much to lose from the establishment of a 200-mile economic zone do not share our perception of the urgency of completing the treaty promptly. With the general expectation from the outset that at least one more full negotiating session would be scheduled in 1976, the United States was vitrually isolated in urging major political compromise at the Geneva session on the very difficult Committee I deep seabed issues.

I bleieve that much common ground was found on navigation, fisheries, continental shelf resources and marine pollution issues. Significant differences remain with respect to the deep seabed regime and authority and, to a lesser degree, on

scientific research and on the desires of landlocked and geographically disadvantaged States to participate in resources exploitation in the economic zone.

The juridical content of the 200-mile economic zone is probably the issue of the most interest to most countries.

The Evensen group made a considerable contribution to the Committee II single text by producing a negotiated chapter on the economic zone, including fisheries and the continental shelf. These articles provide for comprehensive coastal state management jurisdiction over coastal fisheries stocks out to 200 miles. There is also a coastal state duty to conserve stocks and to fully utilize them by allowing access by foreign states to the catch in excess of the coastal states' harvesting capacity. The Articles on anadromous species (e.g. salmon) were largely acceptable to the States most affected. These articles contain new, strong protections for the State in whose fresh waters anadromous fish originate. Attempts to negotiate acceptable articles on highly migratory species such as tuna were not successful. I am hopeful, however, that efforts to reach a negotiated solution in this area will continue.

There was little opposition to a 12-mile territorial sea (Ecuador's proposal for a 200-mile territorial sea was supported only by a handful of countries and even some of the supporting statements were ambiguous). There was a strong trend in favor of a regime of unimpeded transit passage in

straits used for international navigation. There was very widespread acceptance of freedom of navigation and overflight and other uses related to navigation and communication as well as freedom to lay submarine cables and pipelines in the 200-mile economic zone.

Coastal state exclusive rights to the non-living resources (principally petroleum and natural gas) in the economic zone were broadly supported. There was more controversy with respect to coastal State rights to mineral resources of the continental margin where it extends beyond 200 miles. As a possible compromise between opposing views, the United States suggested the establishment of a precise and reasonable outer limit for the margin coupled with an obligation to share a modest percentage of the well-head value of petroleum and natural gas production with the international community. I anticipate that there will be further negotiations in the Evensen group to determine a precise method for defining the outer limit of the continental margin beyond 200 miles and on a precise formula on revenue sharing.

Regarding protection of the marine environment, texts were completed in the official working groups on monitoring, environmental assessment and land-based pollution. Texts were almost completed on ocean dumping and continental shelf pollution. Negotiations were conducted in the Evensen group on vessel source pollution without reaching agreement; however,

a trend did emerge in favor of international standard setting in the economic zone.

The Group of 77, particularly those who did not participate in the Evensen group urged further strengthening of coastal state rights in the economic zone. The landlocked and geographically disadvantaged states were dissatisfied with the failure of the Evensen articles to afford them to legal right to participate in exploiting the natural resources of the economic zone on a basis of equality with coastal states.

There was a continuation of the debate between those states that demand consent for all scientific research conducted in the economic zone and those such as the United States that support the right to conduct such research subject to the fulfillment of internationally agreed obligations. A new approch sponsored by the Soviet Union attracted considerable support. It requires consent for resource-related research and compliance with internationally agreed obligations for non-resource related research.

In the dispute settlement working group most states support binding dispute settlement procedures in areas of national jurisdiction although a minority opposed or wish to limit drastically their applicability (e.g. to navigation and pollution issues). Questions remain with respect to the relationship to coastal state resource jurisdiction and the scope and type of

the dispute settlement mechanism. A compromise proposal permitting States to elect between three dispute settlement mechanisms -- i.e. the International Court of Justice; arbitration or a special Law of the Tribunal -- was acceptable to the vast majority of participatns. However, some Delegations considered that their preferred mechanism should be compulsory in all cases, while others favor a functional approach -- different machinery for different types of disputes. General support exists for special dispute machinery for the deep seabed.

It is now clear that the negotiation on the nature of the deep seabed regime and authority is the principal stumbling block to a comprehensive Law of the Sea Treaty.

The basic problem is an ideological gap between those possessing the technological ability to develop deep seabed minerals and those developing countries which insist that the international authority directly and effectively control all deep seabed mining and associated activities, and ultimately become the exclusive operator on the deep seabed. The developing countries' position in this area is reflective of their general concern expressed in other international forums for reordering the economic order with respect to access to and control over natural resources, particularly with respect to their price and rate of development.

The United States explored a number of approaches in an effort to be forthcoming with respect to developing country

demands for participating in the exploitation system. We indicated our willingness to abandon the inclusion of detailed regulatory provision in the treaty and to concentrate on basic conditions of exploitation. We agreed to consider a system of joint ventures and profit sharing with the Authority. In addition, we proposed for consideration the reservation of areas (equal in extent and potential to those in which financial conditions were subject to the Basic Conditions) in which the Authority could negotiate for the most favorable financial terms it could obtain. The Soviet Union proposed a parallel system through the reservation of areas in which the Authority could exploit directly, while in other areas states could exploit under a separate system of regulation by the Authority. Both approaches were rejected by the Group of 77 on the ground of their ideological difficulty in dividing the Common Heritage into two separate regions subject to different systems of exploitation. Some developing country flexibility in the deep seabeds was demonstrated by their willingness to submit the entire exploration system to the control of the Seabed Authority Council and to include representatives of designated developed and developing country interest groups on that body in addition to those selected on the basis of equitable geographic representation.

Mr. Chairman, with over 140 states participating in a Conference affecting vital and complex economic, military, political, environmental and scientific interests, we could

easily characterize the results of the Geneva session as a considerable success. However, it is no longer sufficient to make progress, even substantial progress, if the goal to the adoption of a widely acceptable comprehensive treaty continues to elude us beyond the point at which many States will feel compelled to take matters into their own hands in protecting interests with which the existing law of the sea does not deal adequately or equitably.

Mr. Chairman, I have spent a considerable amount of time over the last six years working with those both within and outside our government who appreciate the imperative need of building a better legal order for the oceans. Throughout this period, the members of the Senate Foreign Relations Committee, and you in particular, have provided sound advice and unfailing support in this effort to resolve what appeared at first to be insolvable problems. Some still believe that failure is inevitable. I do not and cannot accept that view. Moreover, I do beleive most strongly that we would be terribly remiss as a nation if we did not make every exertion necessary to achieve an acceptable treaty on what appears to be the final stretch of this long road we have travelled. I sincerely hope that this Committee and the Congress in general will give its support to my successor as it has to me in our common endeavor to establish order in the oceans.